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B.T., Appellant)	
)	
and)	
)	Docket No. 19-1505
)	Issued: April 2, 2021
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, METROPOLITAN)	
DETENTION CENTER, Brooklyn, NY,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as he no longer had residuals or disability causally related to the accepted November 16, 2014 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after June 29, 2018.

FACTUAL HISTORY

On November 18, 2014 appellant, then a 43-year-old federal correctional officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained right elbow, left knee, right shoulder, back, and neck injuries, as well as an emotional condition on November 16, 2014 when a fast moving motor vehicle crashed into the guard booth where he was sitting while in the performance of duty. He stopped work on that date. On January 8, 2015 OWCP accepted appellant's claim for sprain of the neck, right bicipital tenosynovitis, and bilateral knee contusions. On March 3, 2015 appellant underwent right shoulder arthroscopy. On August 13, 2015 he underwent cervical discectomy, fusion, and instrumentation at C4-5 and C5-6. On June 24, 2015 OWCP expanded acceptance of appellant's claim to include C2-3 cervical disc herniation, L5-S1 lumbar disc herniation, and cervical radiculitis. On February 18, 2016 appellant underwent bilateral foraminotomies at L4-5 and L5-S1.

On May 30, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his June 16, 2017 report, Dr. Askin reviewed the SOAF and performed a physical examination. He found that appellant had no objective findings, noting that he was able to bend greater than 90 degrees at the waist, rise from a bent over position without difficulty, and fully bend 20 degrees to each side. Dr. Askin further indicated that appellant presented with no muscle spasm, a negative straight leg raising, bilaterally, and intact sensation to light touch of the lower extremities. He opined that appellant had no residuals of his accepted conditions and was capable of performing his date-of-injury position. Dr. Askin noted that the only lingering effects from appellant's injuries were surgical scars and recommended no further treatment.

In a June 22, 2017 note, Dr. Rikki Racela, a Board-certified neurologist, diagnosed cervical radiculopathy and injury of nerve root of the lumbar spine. On September 22 and December 1, 2017 he repeated his findings and diagnoses.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 15, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On April 16, 2018 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits because he no longer had residuals or disability due to the accepted November 16, 2014 employment injury. It found that the weight of the medical evidence rested with the June 16, 2017 report of Dr. Askin. OWCP afforded appellant 30 days to respond if he disagreed with the proposed termination.

On April 25, 2018 appellant, through counsel, submitted a statement disagreeing with the proposed termination and asserted that Dr. Askin's June 16, 2017 report was not entitled to the weight of the evidence, arguing that Dr. Askin did not provide a report consistent with the SOAF as he disagreed that the accepted conditions were employment related and did not review appellant's date-of-injury job description.

On May 24, 2018 Dr. Racela diagnosed cervical radiculopathy and found that appellant could not fully raise his right shoulder overhead. He reported that appellant's C2-3 disc herniation remained and was not amenable to surgical correction. Dr. Racela reported that appellant had severe breakthrough pain requiring medication.

By decision dated June 28, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 29, 2018.

On July 10, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated June 14, 2018, Dr. Racela noted appellant's history of injury and accepted cervical and lumbar disc herniations which led to refractory headaches. He noted that surgery helped decrease the muscle spasms in appellant's neck, but that the C2-3 disc herniation was not amenable to surgical correction. Dr. Racela reported that appellant continued to experience residual pain in his scalp as well as low back pain which continued after surgery. He opined that due to appellant's injuries, his pain was chronic and permanent and that appellant's pain would affect his ability to perform physical work. Dr. Racela found that appellant had reached maximum medical improvement and that he required permanent and ongoing pain medication and physical therapy to control his pain.

On November 16, 2018 counsel appeared at the oral hearing and contended that Dr. Racela's report created a conflict with that of Dr. Askin.

In a report dated January 8, 2019, Dr. Racela reviewed Dr. Askin's June 16, 2017 report and disagreed with his findings and conclusions. He found that appellant remained disabled due to chronic pain from his injuries. Dr. Racela opined that appellant's C2-3 disc herniations could explain his chronic headaches and neck pain. He further noted that the L5-S1 disc herniations were causing tingling in appellant's feet and toes. Dr. Racela found that Dr. Askin's findings supported that appellant could not return to work and that the radiological findings of disc herniations could very well be a result of the employment injury rather than age-related.

By decision dated January 15, 2019, OWCP hearing representative found that the weight of the medical evidence rested with Dr. Askin, who noted that there were no objective findings supporting appellant's continuing disability or medical residuals causally related to his November 16, 2014 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁴ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as he no longer had residuals or continuing disability causally related to his November 18, 2014 employment injury.

OWCP referred appellant to Dr. Askin, a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of his accepted work conditions and capacity for work.

In his report dated June 16, 2017, Dr. Askin reviewed the SOAF provided by OWCP, noted the accepted conditions and performed a physical examination. He described the employment injury and appellant's continuing complaints. Dr. Askin provided findings from the physical examination performed that day and noted that appellant had no objective findings to support continued disability for work and no employment-related residuals. He concluded that appellant could return to work in his date-of-injury position. Dr. Askin found that appellant's only lingering effects from his injuries were surgical scars and that no further treatment was needed.

The Board finds that Dr. Askin's opinion represents the weight of the medical evidence in this case. Dr. Askin provided a detailed medical report reviewing the medical records and evidence of record. He unequivocally opined that appellant did not have residuals or disability from the accepted employment-related conditions, and he provided a medical explanation

⁴ *D.M.*, Docket No. 17-1052 (issued January 24, 2019); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003); *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *D.M.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *L.D.*, Docket No. 18-1600 (issued April 25, 2019); *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *T.W.*, Docket No. 18-1573 (issued July 19, 2019); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *L.H.*, Docket No. 17-1859 (issued May 10, 2018); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Id.*; *James F. Weikel*, 54 ECAB 660 (2003).

supported by objective findings.⁹ Accordingly, OWCP properly relied on Dr. Askin's second opinion report in terminating appellant's wage-loss compensation and medical benefits.¹⁰

Appellant's attending physician, Dr. Racela, in his May 24, 2018 report, opined that appellant had residuals and disability from the accepted November 16, 2014 employment injury. He diagnosed cervical radiculopathy and reported that appellant's C2-3 disc herniation remained and was not amenable to surgical correction. Dr. Racela further reported that appellant had severe breakthrough pain. However, he did not provide objective physical findings of the accepted work-related conditions nor did he support his findings of continued work-related residuals and disability with medical reasoning.¹¹ Therefore, this report is insufficient to support continuing work-related residuals and disability.

The Board thus finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 29, 2018.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to the claimant to establish that he or she has continuing residuals or disability causally related to the accepted employment injury.¹² To establish causal relationship between the disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, establishing such causal relationship.¹³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals on or after June 29, 2018 due to his accepted employment injury.

Subsequent to the termination of his wage-loss compensation and medical benefits, appellant submitted reports from Dr. Racela dated June 14, 2018 and January 8, 2019 in which he again noted that appellant's C2-3 disc herniation was not amenable to surgical correction. Dr. Racela reported that appellant experienced residual pain in his scalp as well as low back pain

⁹ *T.W.*, *supra* note 7; *A.C.*, Docket No. 16-1670 (issued April 6, 2018).

¹⁰ *See T.C.*, Docket No. 19-1383 (issued March 27, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹¹ *T.W.*, *supra* note 7; *A.G.*, Docket No. 18-0749 (issued November 7, 2018).

¹² *Id.*; *George Servetas*, 43 ECAB 424, 430 (1992).

¹³ *Supra* note 10.

¹⁴ *D.M.*, Docket No. 17-1992 (issued September 12, 2018); *C.W.*, Docket No. 12-1211 (issued November 15, 2012); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

and tingling in his feet and toes which continued after his spine surgeries. He opined that due to appellant's injuries his pain was chronic and permanent and it would affect his ability to perform physical work. Dr. Racela found that appellant required permanent and ongoing pain medication and physical therapy to control his pain. He determined that Dr. Askin's findings supported that appellant could not return to work. The Board finds that Dr. Racela's opinions are of limited probative value because he did not provide medical rationale in support of his conclusions on continuing work-related residuals. A medical opinion not fortified by medical rationale is of diminished probative value.¹⁵ Because Dr. Racela failed to provide sufficient medical rationale for his conclusion, his opinion is of diminished probative value.

The Board thus finds that appellant has not submitted sufficient medical evidence to establish that he has continuing residuals or disability on or after June 29, 2018 causally related to his November 16, 2014 accepted injury.¹⁶ Appellant, therefore has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as he no longer had residuals or disability causally related to his accepted November 16, 2014 employment injury. The Board further finds that he has not met his burden of proof to establish continuing disability or residuals on or after June 29, 2018 causally related to his accepted employment injury.

¹⁵ *T.W.*, *supra* note 7; *T.L.*, Docket No. 18-0536 (issued November 27, 2018); *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

¹⁶ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board